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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CRIMINAL PRODUCTIONS, INC., Plaintiff, vs. OSAMU MOTOBA, *et al.*,, Defendant	Civil Action No. 16-cv-1351RAJ Motion for Dismissal of Adam Winter (Doe 9)

Defendant, Adam Winter, moves for dismissal:

I. Introduction

1. In response to Plaintiff's Prayer for Relief, no such copy of Plaintiff's motion picture exists on any medium, owned or controlled by, in possession or custody of, Defendant.

2. Defendant would like the court to be aware of the unethical manner by which Plaintiff is irresponsibly filing multitudes of similar civil actions without the necessary evidence or information to do so; the result of which is a costly burden to those caught in Plaintiff's improperly wide net.

3. The improper joinder of the defendants in this case, is improper because of the unwillingness of knowledgeable defense attorneys to properly take advantage of that joinder on behalf of the Defendants.

II. Representation

1. I, Defendant, am representing myself hereupon and herein.

2. Upon receiving notice of this case, I contacted a friend who is an attorney and he referred me to another attorney, Benjamin Justus. Mr. Justus

did not offer any kind of straight answer as to how this would be resolved, short of receiving a payment for his services, despite the fact that Mr. Justus has represented many people in identical cases, was already representing multiple Defendants in this very case, and most certainly had a very good idea of exactly how this could be resolved.

However, what is remarkable about my encounter with Mr. Justus, is the fact that he chose not to inform me of the fact that he was already representing other defendants in this case, and actually, willfully, made it sound like he wasn't even aware this case existed; despite the fact that he was, at that very time, representing other defendants, in the very same case, each individually. I only found this out later, after having spoke with him.

Upon inspection of the history of these cases, it would seem certain that there is a pattern in which defendants are individually represented by the same few attorneys who charge the defendants, each individually, more than the minimum statutory damages (far more than actual damages) would be for a default judgment, only to threaten the defendant with the addition cost of disputing the case in court and, de facto, forcing the defendant to settle with the plaintiff in a case where the plaintiff has no admissible evidence, and utterly no case against the defendant.

I believe it is well understood that the plaintiff gains and looses certain advantages in choosing a legal strategy. Joining all of these defendants should offer that group the advantage of working together as a group. This is an essential fact. If a reasonable search for an attorney most likely results in one who is unwilling to inform the defendant of this essential fact, then it is improper to join the defendants.

III. Evidence

1. It is the very nature of the doings of the "hacker" type, to cover their tracks by hiding their own IP address. Simple "VPN" programs allow

even the most basic computer user to hide their IP address. However, since an IP address is the currency by which data travels, the result is that hackers route their data through other IP addresses and mask their own traffic with other IP addresses. The end result is, necessarily, that sloppy, superficial, forensic evidence will point towards random people. These people will often be those who have, unwittingly, had malware installed on their computer which simply allows the director of that malware to route data through that computer. Likewise, the very nature of a "VPN" program is to, knowingly or unknowingly, allow data to be routed through one's computer, though the nature of that data is certainly unknown. **It is here that one's right to free speech and privacy must be upheld, sometimes at the cost of those who have the means to produce major motion pictures.** This is to say that an IP address, alone, is no evidence at all.

The fact that so many of these identical cases include defendants that turn out to be nobody at all, very clearly shows the haphazard manner in which Plaintiff is acting, and the sloppy, superficial evidence being used as justification for a fishing expedition. On this point, it is abundantly clear that Plaintiff has grossly misrepresented their due diligence in collecting anything more than an IP address. After receiving notice from Plaintiff, I called the office of David A Lowe to inform them that I was not the person they are looking for. Clearly, only paying an attorney to tell them that is sufficient for this racket.

2. Exhibit A is the immediate response of David A Lowe, Plaintiff's attorney, to the letter he received, Exhibit B, detailing more of the unethical actions taken by the law firm of Mr. Lowe, in an identical case to this one, and further explaining (more reasons) why the "evidence" presented by Plaintiff is inadmissible; "Washington law protects its citizens from this

very thing - the use of unlicensed investigators creating evidence to be used in Washington courts, especially unlicensed investigators out of reach of discovery." The unlicensed investigators referred to here are the very same used in my case, and are located in Germany; Germany being the location from which this so-called "evidence" was collected.

Respectfully submitted this 28th of March, 2017

Adam Winter
19727 76th Ave. W #A9
Lynnwood, WA 98036

253-709-5103

Honorable Robert S. Lasnik

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CELL FILM HOLDINGS, LLC, Plaintiff, v. BEVERLY ROGERS, an individual; KELLY ULRICKFEN, an individual; STEPHANIE SPINELLA, an individual; DIANA WILD, an individual; JAIME ALARCON, an individual; and JENNIFER DOMINGO, an individual, Defendants.	Civil Action No. 16-cv-1180RSL VOLUNTARY DISMISSAL OF JAIME ALARCON (DOE 9)

Pursuant to Rule 41(a)(1)(A)(i), Plaintiff hereby dismisses its claims against the noted Defendant(s).

s/ David A. Lowe, WSBA No. 24,453
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December 19, 2016

Exhibit B

David A. Lowe
Lowe Graham Jones PLLC
701 5th Ave., Ste. 4800
Seattle, WA 98104-7009
lowe@lowegrahamjones.com

Re: Cell Film Holdings, LLC ("CFH") v. Alacorn, WD WA Case No. 16-cv-1180 RSM

Dear Mr. Lowe:

This law firm represents Jaime Alacorn with respect to the federal lawsuit your law firm has filed against him.

Mr. Alacorn is wholly innocent. Mr. Alacorn and Mrs. Alacorn are married and have no children. Mr. Alacorn did not copy the movie "Cell," nor did he distribute that movie to anyone. Mrs. Alacorn is likewise wholly innocent. The Alacorns were not at home over the Fourth of July weekend when the accused data blip was entrapped by your client's representatives' German investigator. The Alacorns had never heard of the movie before the lawsuit. English is not Mr. Alacorn's native language and his personal entertainment choices are customarily not in English.

Mr. Alacorn works in a computer repair/service business. With his background, Mr. Alacorn is aware of Bittorrent, but he does not use it. Mr. Alacorn occasionally brings customer computers home as part of his job. He has an open wifi system at home because he does not want to have to enter a family private password into a customer's computer when servicing it.

The Alacorns live in the Brigadoon Apartment complex on Laventure Road in Mt. Vernon. The Brigadoon Apartments are a five building complex. Their building is on the south side of the Brigadoon complex which directly abuts another multi-building apartment complex on Kulshan View Drive to the south. This may be an explanation for the existence of the entrapped blip, although the entrapped blip may also simply be an errant data point as must have been the explanation in my firm's representation of other innocent defendants who had a password protected wifi network.

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We respectfully request that CFH voluntarily dismiss Mr. Alacorn from the case. If he is dismissed by Noon on Tuesday December 27, 2016, we will not Answer the Amended Complaint, and we will not seek defense attorneys' fees or costs. If the case is not dismissed by Noon Tuesday December 27, 2016, we will Answer during the afternoon of December 27, 2016, and we will seek defense attorneys' fees when Mr. Alacorn wins, which is a certainty given his innocence.

We have investigated the CFH cases filed throughout the country by your law firm and by the other law firms associated with your client's foreign representatives. As with our investigations of The Thompsons Film, Elf-Man, and London Has Fallen, we see no manner in which your client could prevail at trial. The German investigators are not licensed as private investigators in the State of Washington, as is required by RCW 18.165 for them to generate evidence to be admitted into court. Even if the entrapped blip were admissible, it is not sufficient evidence that any person copied the movie or distributed it in violation of Title 17 U.S.C. As we understand Dr. Richter's report, the entrapped blip is so small that it is not humanly perceptible, just as we showed with Mr. Patzer's data of an entrapped blip in Elf-Man.

Additionally, we remain concerned with the manner in which CFH's counsel has sought the ISP subscriber identifications that form the basis for naming and serving hundreds of federal defendants. We would not be surprised if CFH itself is unaware of the mechanics of the institution of these cases, but its counsel and its foreign representatives are.

For example, just as in LHF, we see that the various CFH counsel have used Daniel Arheidt claiming to be a consultant to Maverickeye, and have used Daniel Macek claiming to be a consultant to Crystal Bay Corporation, and also have used no technical witness other than local counsel to vouch for the typed-up charts of alleged infringement. We also see a declaration of Mesut Tarhan claiming to be an "IT Administrator" for Maverickeye, used in ED LA Case No. 2:16-cv-14970 ECF No. 4-2. The date and time of Mr. Tarhan's "observation" is in between the dates and times of a declaration filed by your firm where Mr. Arheidt claims to have made the "observation." Given this overlap, both of these declarations – Mr. Tarhan's and Mr. Arheidt's – cannot be true.

Mr. Macek has been a prolific witness used to obtain subpoenas, using declarations which state no background or experience in the matters to which he states he "has personal knowledge." Your law firm has filed declarations from Mr. Macek claiming to be a consultant to Crystal Bay Corporation, including in cases claimed to be related to this one in Dkt. # 3. Your law firm has also filed identical declarations from Mr. Macek claiming to be a consultant to Maverickeye, in cases also claimed to be related to this one in Dkt. #3. Mr. Arheidt's declaration in this matter,

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Dkt. #6, is likewise identical to that filed by Mr. Macek claiming to work for Crystal Bay Corporation in ED WA 2:13-cv-395, ECF No. 88 – the case where your law firm informed the Court that "Darren M Griffin" was a "former investigator" for Crystal Bay Corporation, ECF No. 105.

The connection to prolific fictitious witness "Darren M. Griffin" occurs in other CFH matters as well. For example, in the Southern District of Ohio, Case No. 3:16-cv-2265, CFH filed a Declaration of Daniel Macek claiming to work for Crystal Bay Corporation, ECF No. 6-1, which appears to be executed April 30, 2016. The accompanying typed up chart of claimed infringement shows the "hit dates" ranging from June 10 to June 23, 2016. How could Mr. Macek sign a Declaration before the blips had even been entrapped?

Despite this clear pre-dating problem, CFH's Ohio counsel, Timothy Shimko, filed an 18 page *Ex Parte* Application for Leave to Take Discovery Prior to Rule 26(f) Conference, ECF No. 6. CFH's Application cites Mr. Macek's pre-dated declaration forty-seven times (e.g. "This evidence is then saved by Crystal Bay. Macek Decl. ¶13." ECF No. 6 at 10.) The June, 2016 dates and times of these Ohio "Macek at Crystal Bay" observations directly overlap the June, 2016 dates and times Mr. Arheidt says he "observed infringing" while working as a Maverickeye consultant in a CFH declaration filed by your law firm in WD WA Case No. 2:16-cv-1091. Given this overlap, both of these declarations – Mr. Macek's and Mr. Arheidt's – cannot be true.

We see CFH has its Fed. R. Civ. P. 26(f) Conference due December 28, 2016, and its required 26(a)(1) initial disclosures January 4, 2017 in WD WA Case No. 2:16-cv-1649. Will Mr. Macek and Crystal Bay Corporation be disclosed? Mr. Tarhan? (We note the current use of Mr. Tarhan in ED LA, which formerly used Mr. Macek, for example, in Clear Sky v. Doe, Case No. 2:16-cv-1511, ECF No. 4-2, and also formerly used "Darren M. Griffin," for example, in TCYK v. Doe, Case No. 2:13-cv-3064, ECF No. 3-1.)

If we are forced to Answer for Mr. Alacorn, we will insist on discovery of the relationships of Messrs. Tarhan and Arheidt of Maverickeye to Messrs. Macek and "Darren M. Griffin" of Crystal Bay Corporation (and to "Daniel Susac" of "Excipio" who has similar handwriting to Daniel Arheidt and "Darren M. Griffin.") We doubt Mr. Arheidt will be eager to explain his relationship to the prolific fictitious witness, or how Mr. Arheidt could have filed a twenty-one paragraph declaration identical to that of a fictitious person "based on personal knowledge."

We assume you and your client's foreign representatives are aware of the action brought last week by the United States Attorney for the District of Minnesota for fraud and perjury for acts including

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the use of sham entities and witnesses in Bittorrent copyright litigation. Is CFH aware of its direct connections to fictitious witness "Darren M. Griffin" through its SD OH witness Daniel Macek who, like the fictitious witness, claims to be a consultant of "Crystal Bay Corporation" of "South Dakota" "in its technical department"? Over forty of these fictitious "Darren M. Griffin" declarations were filed in our Western District of Washington.

We have carefully reviewed the identical Crystal Bay Corporation declarations to the identical Maverickeye declarations. We see the bulk of the "Darren M. Griffin" of Crystal Bay Corporation declarations were filed in 2013. Then in 2014 came the Daniel Macek of Crystal Bay Corporation declarations. Then in 2015 came the Daniel Macek of Maverickeye declarations. In mid-2016 the Daniel Arheidt of Maverickeye declarations start (with very similar handwriting to "Daniel Susac" and "Darren M. Griffin.")

All of these declarations are essentially identical, regardless of the witness and regardless of the company the witness claims to work for. For example, the Macek declaration filed in Elf-Man, ED WA Case No. 2:13-cv-395, ECF No. 88, has the same typographical error ("The forensic technology used by Crystal Bay is propriety (sic) software…") as the Arheidt declaration filed in this case Dkt. #6 (The forensic technology used by MEU is propriety (sic) software…") Not exactly "propriety."

A final notable point is CFH's filing in the ED VA, Case No. 3:16-cv-750, ECF No. 5-1, of the report of Dr. Simone Richter who does not vouch for the typed-up charts of alleged infringement in that case, but does vouch for the apparent ability of the "MaverickMonitor" software to entrap Bittorrent blips and their associated metadata. We find it interesting that Dr. Richter's report is dated April 21, 2014 (when most of the U.S. non-porn Bittorrent cases were still using "Macek at Crystal Bay Corporation" declarations) and that the test itself was conducted in January, 2014 (at the tail end of the long run of the "Darren M. Griffin" at "Crystal Bay Corporation" declarations.) Maybe Dr. Richter's 30-month-old report is somehow relevant to CFH's newly-filed cases, but again we find the overlap with a South Dakota shelf corporation with no "technical department" and a fictitious "witness" to be troubling.

We could go on with the mysterious overlaps and timing issues that are evident from the permanent PACER records. But the bottom line is that there is no admissible evidence from these German witnesses, regardless of their stated employers and regardless of their existence, because Washington law protects its citizens from this very thing – the use of unlicensed investigators creating evidence to be used in Washington courts, especially unlicensed investigators out of reach of discovery. Plus, Mr. Alacorn is wholly innocent. A defense verdict is certain.

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Please consider our offer to not Answer, nor pursue defense attorneys' fees, if the case against Mr. Alacorn is dismissed by Noon, Tuesday December 27, 2016. Otherwise, we will submit our Answer that afternoon and patiently work towards Mr. Alacorn's full exoneration and the ruling on our request for defense attorneys' fees.

Thank you for your consideration of our position.

Very truly yours,

LEE & HAYES, PLLC

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c: Mr. Alacorn
Zach K. Haveman, Esq.
Kyle D. Nelson, Esq.